

SHERRY D. FARMER,

Plaintiff,

V.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

Case No. 2:06-0052

Judge Nixon

Magistrate Judge Knowles

ORDER

Pending before the Court is Defendant's Motion to Dismiss for Lack of Jurisdiction ("Motion") (Doc. No. 12), accompanying Memorandum in Support (Doc. No. 13), and Declaration of Earnest Baskerville (Doc. No. 14). Magistrate Judge Knowles has issued a Report and Recommendation ("Report and Recommendation") (Doc. No. 15) that Defendant's Motion be granted and the instant action be dismissed with prejudice. Plaintiff has not filed a Response to Defendant's Motion, nor any objections to the Magistrate's Report and Recommendation.

Pursuant to Federal Rules of Civil Procedure 12(b)(1), Defendant moves the Court to dismiss the instant action for lack of jurisdiction because Plaintiff did not timely commence this action. As cause for dismissal, Defendant asserts that both parties have concurred that the Appeals Council of the Social Security Administration rendered its final decision denying Plaintiff's request for benefits on March 25, 2006. Further, Defendant contends that both parties have agreed that this Court has jurisdiction to review the final decision of the Secretary of Health and Human Services, upon the bringing of a civil action within sixty (60) days after mailing to the

claimant a Notice of an adverse decision, pursuant to Section 205(g) of the Social Security Act ("Act"), as amended (42 U.S.C. § 405(g)).

In the instant action, Plaintiff filed her Complaint on June 6, 2006 (Doc. No. 1) and did not request an extension of time to file her civil action, pursuant to Section 205(g) of the Act. See Doc. No. 14 at 3. Accordingly, Defendant claims that the date upon which Plaintiff filed her Complaint is beyond the sixty(60) day statutory deadline and no extraordinary circumstances exist in the instant action, which justify tolling the sixty (60) day requirement. See Bowen v. City of New York, 476 U.S. 467, 480 (1986).

As noted above, Plaintiff has not filed responsive pleadings to either Defendant's Motion or the Report and Recommendation.

After review of the pending pleadings, Report and Recommendation, and relevant statutory and case law, this Court adopts the reasoning of the Magistrate's Report and Recommendation in its entirety. Thus, this Court hereby **GRANTS** Defendant's Motion to Dismiss for Lack of Jurisdiction. This Order terminates the Court's jurisdiction over the above-styled action and the case is **DISMISSED** with prejudice.

It is so ORDERED.

Entered this the 18th day of May, 2007.


JOHN T. NIXON, SENIOR JUDGE
UNITED STATES DISTRICT COURT